



# California Fair Political Practices Commission

September 12, 1989

J. Steven Lempel  
Professional Law Corporation  
800 M Street  
Fresno, California 93721

Re: Your Request for Informal Assistance  
Our File No. I-89-431

Dear Mr. Lempel:

In your capacity as the Mendota City Attorney, you have requested advice concerning the duties and responsibilities of Mendota Councilmember Gomez under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Your letter also makes reference to certain past actions of this member of the city council. We reach no conclusion regarding whether these past actions are in compliance with the Act. (See Regulation 18329(c)(4)(A), copy enclosed.) However, set forth below is a general discussion of the applicable provisions of the law. We trust this informal assistance will be useful to you in the future.<sup>2</sup>

## QUESTIONS

1. May a councilmember appear before the planning commission to represent his own interests regarding a land use application?
2. May a councilmember contact individual members of the planning commission to discuss his land use application?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### CONCLUSIONS

1. A councilmember may appear before the planning commission to represent his own interests regarding a land use application for land wholly owned by himself or his spouse or dependent children.

2. A councilmember may not contact individual members of the planning commission to discuss his land use application.

### FACTS

The planning commission of the City of Mendota filed a complaint with the city council alleging that Mr. Gomez, a councilmember, had appeared before the planning commission on a land use application relating to his own property. Allegedly, Mr. Gomez also contacted individual members of the planning commission directly to discuss this project with them. The planning commission felt that Mr. Gomez's conduct was inappropriate because, as a councilmember, Mr. Gomez participates in the decision to appoint members of the planning commission. Additionally, decisions of the planning commission are appealable to the city council. Mr. Gomez's application, however, has not been appealed to the city council and Mr. Gomez has not participated as a member of the city council in any action related to his permit application.

### ANALYSIS

The Political Reform Act states that a public official may not make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.)

Regulation 18700.1, which implements Section 87100, clarifies the meaning of attempting to "influence a governmental decision" as follows:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

Moreover, the Act states that an official has a financial interest in a decision if it is reasonably foreseeable that the

decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family or on any real property in which the public official has a direct or indirect interest worth one thousand (\$1,000) dollars. (Section 87103(b).)

It is clear from the above that a public official may not participate in the decision to grant or deny a land use permit for real property in which the official has an investment of at least \$1,000. Additionally, a councilmember may not contact individual members of the planning commission to influence their decision regarding his land use application. Because the planning commission is appointed by the city council and is subject to the city council's budgetary control, a councilmember generally may not attempt to influence the decisions of the planning commission. (See Stout Advice Letter, No. I-88-313, copy enclosed.)

However, the Act does not prohibit a public official from appearing before the decision-making body to represent his own interests. Within specific parameters, a councilmember may appear before the planning commission with regards to his own land use application. Regulation 18700.1(b) (copy enclosed) authorizes such participation if the official:

(1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

(B) A business entity wholly owned by the official or members of his or her immediate family.

(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.

Clearly, then, while a councilmember may not contact individual members of the planning commission to influence their decision, a councilmember may appear before the planning commission in the same manner as any other member of the general public if the decision involves real property wholly owned by the

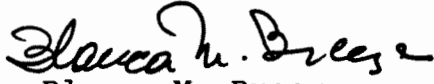
councilmember or members of his immediate family,<sup>3</sup> or certain other of his "personal interests." In making such an appearance, the councilmember should make it clear that he is appearing only in his individual capacity and must not act or purport to act on behalf of the city council. (Regulation 18700.1(c).) (See Vose Advice Letter, No. I-87-248, copy enclosed.)

The conflict-of-interest provisions of the Act are summarized in the enclosed pamphlet entitled "A Guide to the Political Reform Act -- California's Conflict of Interest Law for Public Officials." You may find the pamphlet useful for future reference.

Should you have any further questions regarding this matter, do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Blanca M. Breeze  
Counsel, Legal Division

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Enclosures

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<sup>3</sup> For purposes of the Act, Mr. Gomez' "immediate family" is his spouse and dependent children. (Section 82029.)

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J. STEVEN LEMPEL  
PROFESSIONAL LAW CORPORATION  
800 M STREET  
FRESNO, CALIFORNIA 93721  
(209) 268-4021

July 17, 1989

Legal Counsel  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA. 95804

Re: Request for legal opinion

Dear Sir/Madame:

As City Attorney for the City of Mendota, I have been requested by the City Council to seek the opinion of the Fair Political Practices Commission with respect to the propriety of actions by a member of the Mendota City Council, Joe Gomez, in participating in governmental activities affecting his own property.

The City Planning Commission filed a complaint with the City Council to the effect that Mr. Gomez, a member of the City Council, appeared before the Planning Commission on a land use application (Site Plan Review) relating to his own property. Mr. Gomez also contacted individual members of the Planning Commission directly to discuss this project with them. The Planning Commission felt that it was inappropriate for a member of the City Council to participate in this manner with respect to a land use application because, as a member of the City Council, he participates in the decision to appoint persons to the Planning Commission.

Decisions of the Planning Commission, including site plan reviews, are appealable to the City Council. The particular land use application relating to the Gomez property, however, has not been appealed to the City Council, and Mr. Gomez has never participated as a member of the City Council in any action relating to such permit application.

The Fair Political Practices Act, Government Code Section 87100 states:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know that he has an financial interest."  
(emphasis added).

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Commission Regulations Section 18700.1 authorizes public officials to participate in decisions before their own agencies in the same manner as do other residents of the community.

Members of the Planning Commission are of the opinion that Mr. Gomez is barred from appearing before the Planning Commission or from attempting to persuade them to approve his land use application because he is a member of the City Council. They suggest that he cannot step out of his shoes as a member of the City Council when he appears before the Planning Commission, and that he is always acting in his official capacity as a member of the City Council, even when he appears before the Planning Commission in his capacity as a private property owner. (City regulations do not prohibit direct contacts with Planning Commissioners or Councilmen, and such personal contacts are customary.)

I would appreciate an advice letter from the Fair Political Practices Commission addressing the propriety of Mr. Gomez's appearances before the Planning Commission in support of the land use permit for his own property.

Very truly yours,

  
J. STEVEN LEMPEL

JSL/bg

cc: Ronald Corliss  
Mendota City Administrator



# California Fair Political Practices Commission

July 25, 1989

J. Steven Lempel  
City Attorney  
800 M Street  
Fresno, CA 93721

Re: Letter No. 89-431

Dear Mr. Lempel:

Your letter requesting advice under the Political Reform Act was received on July 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh